

by cable operators has been upheld by the U.S. Supreme Court in the recent *Brand X* decision.³⁰⁷ Chairman Martin heralded this decision as “an important victory for broadband providers and consumers.”³⁰⁸ In particular, the Chairman noted that “[c]able companies will continue to have incentives to invest in broadband networks without fear of having to provide their rivals access at unfair discounts.”³⁰⁹

The instant Transactions will not result in any increase in vertical integration in the provision of Internet access. Rather, the Applicants simply are acquiring and exchanging certain cable systems, resulting in the creation of more rational geographic service areas. As the Commission held in its review of the AT&T Broadband/Comcast transaction, increasing the size of an MSO does not make it less likely that the MSO will develop relationships with unaffiliated ISPs or pose any risk of harm to competition from DSL or other broadband platforms.³¹⁰ Consequently, as was the case in connection with the AT&T Broadband/Comcast proceeding, any suggested imposition of conditions on the Applicants regarding unaffiliated ISP access to the Applicants’ cable systems is equally “misplaced” here.³¹¹

³⁰⁷ *NCTA v. Brand X Internet Services*, 125 S.Ct. 2688 (2005).

³⁰⁸ Wall Street Journal, July 7, 2005.

³⁰⁹ *Id.*

³¹⁰ *AT&T Broadband/Comcast Order* at ¶ 137.

³¹¹ *Id.* The Commission properly concluded in its review of the 2002 AT&T Broadband/Comcast transaction that the arguments presented relating to broadband competition were not transaction-specific, but rather raised questions more appropriately dealt with on an “industry-wide” basis. *AT&T Broadband/Comcast Order* at ¶¶ 138-139. As discussed *supra*, there is nothing about the instant Transactions, or any developments that have occurred, that warrants a different conclusion here. By the same token, this Transaction provides no basis for extension of the conditions imposed by the Commission in connection with the AOL/Time Warner merger. *AOL/Time Warner Order* at ¶¶ 126-127.

3. Issues relating to broadcast signal carriage should not be considered.

A few of the commenters raise issues relating to broadcast signal carriage and retransmission consent. Each of these claims is without merit and, in any event, is not transaction-specific. Thus, as explained in Section III. A. *supra*, they warrant no further consideration from the Commission.

First, the licensee of television station KVMD-DT claims that the Applicants have demonstrated “indifference or hostility” to local independent broadcasters, citing the fact that both Applicants have filed market modification petitions to show that certain communities they serve are not “local” in relation to KVMD, which is licensed to Twenty-Nine Palms, California.³¹² The licensee speculates that, if the Transactions are approved, Time Warner Cable may file a petition to delete from KVMD’s market certain additional communities where Adelphia currently carries the station. KVMD’s concerns are not even based on any actual dispute. Indeed, they are based on KVMD’s disagreement with the statutory market modification procedures established by Congress and enforced by the Commission.³¹³ That, of course, is not an issue that can be resolved in the context of this proceeding.³¹⁴ Thus, apart

³¹² KVMD Comments at 2-5.

³¹³ Congress granted the right to seek market modifications to both cable operators and broadcasters, and established detailed standards for the Commission’s adjudication of such matters. See 47 U.S.C. § 534(h)(1)(C); 47 C.F.R. § 76.59.

³¹⁴ Because the Commission ultimately is charged with determining whether a market modification is justified in any particular situation, any suggestion that the Applicants’ pursuit of market modifications involving KVMD (or other independent stations) is somehow unique or undertaken for improper reasons is baseless. It is also belied by the fact that other cable operators have sought, and obtained, market modification rulings involving KVMD and by the fact that Adelphia also has exercised its market modification rights where it has deemed such action to be appropriate. See, e.g., *Lone Pine Television, Inc.*, 18 FCC Rcd 23955 (MB 2003) (granting market modification petition involving three stations, including KVMD); *CoxCom, Inc.*, 19 FCC Rcd 4509 (MB 2004) (granting market modification petition involving KVMD); *Mediacom California LLC*, 18 FCC Rcd 23991 (MB 2003) (granting, in part, market

from acknowledging that the Applicants' pursuit of their statutory rights cannot be held against them, there is no reason for any further discussion of past, present, or future market modification petitions in connection with the instant proceeding.

Second, MAP contends that the Transactions will somehow give Comcast and Time Warner Cable the ability to force broadcasters to accept "unfair" carriage terms, particularly with respect to digital broadcast signals.³¹⁵ MAP's concerns, and its related demand that the Applicants be subjected to unspecified digital broadcast signal carriage obligations, are completely baseless. As a general matter, Congress has addressed the issue of cable carriage of broadcast signals through the adoption of a comprehensive statutory scheme of must carry and retransmission consent regulation, including the recent extension of good faith retransmission consent negotiation obligations to cable operators and other MVPDs.³¹⁶ And insofar as MAP's concerns relate to the application of this statutory scheme to digital broadcasting, these issues are not transaction-specific in nature and should be — and are being — dealt with by the Commission (and Congress) on an industry-wide basis. In any event, it bears noting that both Time Warner Cable and Comcast have exemplary records when it comes to carriage of digital broadcast stations.³¹⁷ The Commission need not and should not consider MAP's vague and unsubstantiated arguments.

modification petition involving KVMD); *Adelphia Cable Partners L.P.*, 13 FCC Rcd 4047 (CSB 1997) (granting market modification petition).

³¹⁵ MAP Comments at 37-38

³¹⁶ See 47 U.S.C. §§ 325, 543, 534. See also *Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Report and Order, FCC 05-119 (rel. June 7, 2005).

³¹⁷ Indeed, Comcast has entered into numerous agreements—with commercial and noncommercial broadcasters alike—to carry broadcaster's digital programming. As set forth in the Public Interest Statement, Comcast is carrying many digital stations, including multicast channels, today (long before the broadcasters have relinquished their analog spectrum) and more

4. The review of the Transactions is not the appropriate forum for modification of the Commission's leased access rules.

MAP and TAC propose that the Commission impose a new leased access regime specific to the Applicants as a condition of the Transactions.³¹⁸ MAP goes so far as to encourage the Commission to impose a leased access condition that incorporates a "fixed rate" expressly designed to ensure that Applicants not be compensated for their costs. Such an approach would be facially unconstitutional under the Takings Clause.³¹⁹

The Commission's leased access rate formula caps the rate a cable operator may charge a programmer at an amount designed to recoup only the forgone value of the used channel, and nothing more.³²⁰ This formula hardly allows a cable operator to gouge a leased access

are sure to come—both as a result of the landmark NCTA/APTS agreement and as a result of ongoing commercial negotiations. Pursuant to these efforts, Comcast has reached agreements (including multicast carriage arrangements) with many of the 356 public television stations in the U.S. In addition, Comcast continues to work with other public broadcasters to devise practical and mutually satisfactory approaches to digital carriage. Comcast has also voluntarily entered into agreements to carry the multicast digital signals of over 170 commercial broadcasters in 62 DMAs. Similarly, Time Warner Cable is a recognized leader in carriage of digital television stations, having entered into a "model agreement" for digital carriage of CBS stations on December 8, 1998, followed by similar digital carriage agreements with Fox, NBC and ABC. On September 19, 2000, Time Warner Cable announced its ground-breaking agreement for digital carriage of PBS stations, which paved the way for the NCTA/APTS agreement. Time Warner Cable is currently carrying the digital signals of over 300 stations.

³¹⁸ MAP Comments at 41-42; TAC Comments at 5-6, 56.

³¹⁹ The issue of whether leased access requirements violated the Takings Clause of the Fifth Amendment to the Constitution was raised in *Midwest Video Corporation v. FCC*, 571 F.2d 1025 (8th Cir. 1978). While the court concluded that it was not necessary to resolve the issue, it noted that the petitioners had argued the question "persuasively." *Id.* at 1057. The Supreme Court, affirming the invalidation of the rules on jurisdictional grounds, expressly declined to reach the takings issue. *United States v. Midwest Video Corp.*, 406 U.S. 689, 709, n. 19 (1972).

³²⁰ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Leased Commercial Access*, 12 FCC Rcd 5267, ¶ 33 (1997) (The maximum rate allowed "represents the average amount of subscriber revenue that full-time programmers cede to the operator to permit the operation to cover its costs and earn a profit."). Section 76.970 of the Commission's rules describes the precise methodology used by each cable system to calculate its maximum leased access channels rates. 47 C.F.R. § 76.970(d)-(h).

programmer or to realize a "generous profit" from such carriage, as MAP asserts.³²¹ Indeed, on many cable systems, the rate formula often produces a lease rate under \$10 per hour.³²² It is far from clear what a universal fixed rate would accomplish, other than producing the unfair and unlawful result of below-cost rates.

Not only are entreaties to reform the statutorily-mandated leased access rules not transaction-specific, MAP and TAC fail to recite particular harms or abuses they seek to cure.³²³ As noted above, leased access channel rates are carefully regulated,³²⁴ and thus any inference that "unfair" rates inhibit leased channel usage is patently false. Indeed, Comcast and Time Warner Cable believe they have established leased channel rates in full compliance with Commission standards, and the Applicants are not aware of any leased access requests from either MAP or TAC. In any event, the Commission's rules contain procedures that are entirely adequate to address any complaints alleging violations of the leased access requirements.³²⁵

³²¹ MAP Comments at 42. Contrary to MAP's suggestion that the Commission has favored cable operators by creating an ineffectual rate regime that does not "harm the system operator," it was Congress, not the Commission, that instructed as part of Section 612 that the "price, terms, and conditions" for leased access should "not adversely affect the operation, financial condition, or market development of the cable system." 47 U.S.C. § 532(c)(1). Similarly, Congress instructed in the legislative history that "[w]hile the overall intent of [Section 612] is to diversify the sources of programming available to the public, this is to be accomplished in a manner consistent with the financial viability of individual cable systems." House Committee on Energy and Commerce, H.R. Rep. No. 628, 102d Cong., 2d Sess. (1992) at 50.

³²² See, e.g., *Lorilei Communications, Inc. d/b/a The Firm vs. Harmon Cable*, 12 FCC Rcd 13279 (1997) (average per hour leased access rate of \$9 per hour).

³²³ Indeed, TAC fails to propose a specific condition, stating simply that "we look forward to developing these ideas in dialogue with Commission staff during the course of this proceeding." TAC Comments at 56. Of course, the time for TAC to put forward its proposals was during the comment period so that Applicants would have the opportunity to address them.

³²⁴ See 47 C.F.R. § 76.970.

³²⁵ See 47 C.F.R. § 76.975.

5. There is no basis to condition Commission consent for the Transactions on obtaining local franchise transfer approvals.

The City of San Buenaventura, California a/k/a Ventura (the "City") urges that any Commission approval for the transfer of control or assignment of any Cable Television Relay Service ("CARS") license that serves the City be conditioned upon approval by the City for the transfer of the local cable franchise. As will be shown below, such a condition is unwarranted.

The City seeks to justify its proposed condition solely on the basis of an informal letter ruling issued over sixteen years ago by the Chief of the then-Video Services Division of the then-Mass Media Bureau involving a CARS license transfer in connection with the sale of the cable system in Laredo, Texas.³²⁶ The *Stern Letter* correctly observes that Commission action approving a CARS transfer or assignment is not dependent on prior local approval, and that processing by Commission staff of such applications without reference to the timing of local franchising approvals aids in the smooth flow of the Commission's workload. Despite this clear finding that the agency's license transfer process and local cable franchise review should properly be viewed as independent and unrelated, the *Stern Letter* incongruously imposed a condition restricting the consummation of the CARS license transfer in the context of that specific proceeding until local franchise transfer approval was obtained.

Whatever weight the *Stern Letter* may once have had, it has been rendered moot by the practicalities of today's marketplace and subsequent Commission practice. The approach advocated by the City would unduly complicate the Commission's license transfer review process. Transactions today are frequently complex and often require multiple regulatory approvals, including those by local authorities, state agencies, the FTC or DOJ, the SEC and this Commission. A requirement that all regulatory approvals be mutually conditioned on each other

³²⁶ *Letter to Jill Abeshouse Stern*, 4 FCC Rcd 5061 (1989) (the "*Stern Letter*").

would be unduly cumbersome, unwieldy, and cause unacceptable delays.³²⁷ Indeed, in recent transactions, the Commission has in fact declined to impose a local franchise transfer condition.³²⁸

In any event, the condition requested by the City is unnecessary. In the instant Transactions, the 120-day franchise transfer review process prescribed by Section 617 of the Communications Act will run in advance of the Commission's 180-day informal target for reviewing transactions and associated license transfers, providing the City with a full opportunity to consider the transfer of its franchise.³²⁹ Moreover, none of the CARS facilities to be transferred in the Transactions provide service to the City, so the requested condition would not impact the franchise transfer issues now before the City.³³⁰ For all these reasons, there is no basis to condition the Commission's consent in this proceeding on obtaining local franchise transfer approvals.³³¹

³²⁷ As the Commission has recognized, by imposing a 120-day statutory deadline for franchising authority review of cable franchise transfer requests, "Congress wanted to ensure that the local franchise approval process not unduly delay the consummation of transactions." *Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992; Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provision*, 10 FCC Rcd 4654, ¶ 52 (1995).

³²⁸ *AOL/Time Warner Order*, at n. 152 (approving FCC license transfers even though at least two local franchise authorities had expressly denied franchise transfer approval); *AT&T Broadband/Comcast Order* at ¶ 25 (FCC consent granted while applicants continued to pursue local franchise transfer approvals in approximately 26 communities).

³²⁹ 47 U.S.C. § 537. Indeed, the Parties have already obtained numerous local franchise transfer approvals, even though more than two months remain in the 120-day review process.

³³⁰ There are four CARS licenses held by Century-TCI California, L.P., the franchise holder in the City of San Buenaventura. WHZ-879 and WHZ-880 transmit signals between Baldwin Hills, CA and Santa Monica, CA. WHZ-886 and WLY-269 are in Riverside County, near Hemet, and serve the Pine Cove and Idyllwild areas.

³³¹ The Florida Communities Comments similarly provide no basis for the Commission to delay or condition its approval of the Applications. Aside from general objections relating to clustering and horizontal concentration that have been fully addressed in Section III.B.1 *supra*, the Florida Communities make the unfounded assertion that cable consolidation "has placed

6. The Commission should reject an MVPD rival's attempts to use this proceeding to reopen policy determinations on MDU issues.

Comments filed by Marco Island Cable, Inc. ("MIC") make plain that the submission is designed simply to serve MIC's interests in ongoing litigation against Comcast. All but two pages of MIC's more than 60 page FCC filing consist of court pleadings and related documents in a Florida lawsuit.³³² Comcast is vigorously disputing—in the appropriate judicial forum—MIC's contentions concerning alleged anticompetitive practices under state law, which hinge largely on contractual terms that the Commission recently has declined to prohibit. Yet even if there were any merit to MIC's complaint, it fails to demonstrate that the matter has any nexus to this proceeding.

As plaintiff in the court case, MIC has alleged that Comcast has violated one or more provisions of the Florida Antitrust Act and Unfair and Deceptive Practices Act. Its arguments essentially boil down to one principal complaint: MIC dislikes certain exclusive service agreements in place between Comcast and a number of condominium associations and other entities authorized to operate multiple unit dwellings (collectively, "MDUs").³³³ Characterizing

local governments in an unequal bargaining position with respect to negotiating franchise transfers, renewals and enforcement." The local cable franchises to be acquired by Time Warner Cable and Comcast in the Transactions are valuable assets that reflect a compact between the cable operator and the local community. There is nothing about the Transactions that will alter the Applicants' obligations under local cable franchises or the requirement to address transfer, enforcement and renewal issues individually with each affected community.

³³² See MIC Comments (appending, *e.g.*, Amended Complaint of Marco Island Cable, Inc. v. Comcast Cablevision of the South, Inc., *et al.*, Case No. 03-5267-CA (Cir. Ct. of 20th Jud. Cir. of Florida) (filed Jan. 12, 2004) (later removed to the U.S. District Court for the Middle Dist. of Florida, where it remains pending as Case No. 2:04-CV-26-FtM-29-DNF).

³³³ MIC also alleges that Comcast has engaged in predatory pricing in competing for subscribers on Marco Island. With respect to this wholly unsubstantiated claim, to the extent that MIC is intimating that there have been any infringements of Section 623(d) or the Commission's implementing rules, Comcast essentially reiterates its position set forth in Section III.E.1, *supra* concerning similar claims by RCN: If there is any legitimate dispute over pricing, the

these arrangements in its brief comments as “illegal,” MIC entirely ignores the fact that the Commission already has considered the matter of exclusive MVPD contracts with MDUs in a rulemaking of general applicability, as such an industry-wide matter properly requires, and has decided against regulating them. In its *Cable Home Wiring* proceeding, the Commission determined in 2003 that the factual record concerning exclusive agreements “d[id] not support government intervention with such privately negotiated contracts.”³³⁴

MIC has added nothing to the record in this proceeding that would warrant any different conclusion applicable only to the Applicants here. The legal dispute over provisions of Florida law is being actively litigated in a court of competent jurisdiction, and Comcast expects to prevail in due course.³³⁵ The Commission therefore need not concern itself further with MIC’s contentions. The Commission has ample grounds for summarily rejecting MIC’s call for denial of the Applications or conditions on approval of them.

7. The Applicants are responsive to minority community concerns.

The Commission should summarily dismiss the baseless claims of one commenter concerning Comcast’s record of interest in, and service to, minorities. The facts show that Comcast strives to provide multicultural programming to its subscribers, regardless of location or income level.

appropriate procedure for seeking redress is to file a complaint with the Media Bureau—but MIC has provided no factual evidence to substantiate such a complaint.

³³⁴ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Cable Home Wiring*, 18 FCC Rcd 1342, ¶ 60 (2003). In that Order, the Commission concluded that the record on the policy benefits of exclusive agreements was mixed, but that it contained several solid justifications for such contracts—including, but not limited to, the value of exclusive arrangements to alternative MVPDs in securing the financing needed to compete with incumbent cable operators. See *id.* at ¶ 64 (also noting the bargaining power that such arrangements afforded MDUs to extract favorable pricing and service terms).

³³⁵ The litigation is currently in the discovery phase, with trial scheduled for July 3, 2006. Comcast believes that most, if not all, of MIC’s claims will be resolved by summary judgment motions before the July trial date.

- a. The programming provided by Applicants generously serves minority/multicultural audiences.

A lone commenter asserts without foundation that the Transactions somehow pose a threat to the interest of minority viewers.³³⁶ According to NHMC, Comcast is “singularly insensitive” to the needs of minority viewers — or, at least, to some segment of the Hispanic audience.³³⁷ This claim is plainly contradicted by the facts of Comcast’s extensive offerings for Latinos and others interested in minority-oriented offerings, as well as submissions of other commenters with equal claim to speak on the issue.³³⁸ Even if the claim had evidentiary support, which it does not, the objection has no nexus to this proceeding.

Nevertheless, actual facts show that Comcast is strongly committed to providing programming that meets the needs of minority audiences as both a cable operator and a content provider. Comcast currently carries more than 90 program channels that are either minority-owned or serve minority interests.³³⁹ Moreover, since April 2004, Comcast has concluded 38 channel agreements with foreign and multi-cultural programmers, with another 46 contractual

³³⁶ See NHMC Comments 5-6.

³³⁷ *Id.* at 5. To support this claim, NHMC asserts that “Comcast has been unwilling to provide significant amounts of English language programming directed to the needs of Hispanic Americans.” *Id.* at 6. However, this claim ignores the needs of the many Hispanic viewers who do not speak English or are bilingual but prefer Spanish-language programming. Moreover, to the extent that Si TV’s content is designed to appeal to youthful Latino cultures (whether English-speaking Latinos or a non-Latino crossover audience), it is not clear why Si TV is more entitled to linear carriage on Comcast than any other channel that targets a particular type of special-interest content, *e.g.*, home improvement, history, movies, food, sports.

³³⁸ See National Congress of Black Women Comments at 1 (stating that Comcast has a strong record of diversity in programming and hiring) and Petition for Partial Further Consideration of The Minority Media Telecommunications Council, CS Docket No. 98-120 at n. 16 (filed April 21, 2005) (noting that Comcast “regards diversity as a high priority.”)

³³⁹ Of course, Comcast channel line-ups differ across the country. The actual choices available to a particular subscriber are shaped by the capacity constraints of the local system and management’s determination about the program offerings that are best suited to a particular community’s demographics.

discussions in various stages of development.³⁴⁰ These efforts to acquire and transmit diverse content hardly fit NHMC's broad-brush caricature of an "insensitive" cable operator.

Comcast offers a diverse array of Hispanic-oriented and Spanish-language programming. Allegations that Comcast has been indifferent to the needs of Hispanic-Americans ignore Comcast's demonstrated response to its Latino audiences.³⁴¹ Recognizing the growing presence of such viewers in the various markets it serves, Comcast has actively expanded and diversified its line-up of Hispanic-oriented and Spanish-language programming. Its systems carry many independent Hispanic/Spanish-language networks, including CineLatino, CNN en Español, Canal 24 Horas, MTV en Español, and Discovery en Español. In addition, Comcast has added four new Latino channels to digital tiers in various locations. Three are Spanish-language channels: Casa Club TV, Cine Mexicano and The History Channel en Español.³⁴² One, as NHMC itself recognizes, is the English language, Latino-themed digital network, Si TV. Comcast also recently completed launches of broadcast stations carrying Mexico's Azteca America channel in Comcast's major Hispanic locations. Another recent addition to its line-up is Mun2, or MunDos, a contemporary bilingual channel geared toward younger Hispanic viewers.

Comcast also understands that the broad label "Hispanic" actually covers a number of culturally and ethnically distinct communities. For that reason, Comcast's program offerings are designed to not only appeal to the larger Latino subgroups in the United States — Mexican,

³⁴⁰ For a partial list of these agreements, see Exhibit BB to Applicants' Public Interest Statement.

³⁴¹ NHMC Comments at 5-6.

³⁴² Casa Club programs range from "feng shui" and cooking to interior design and party planning. Cine Mexicano offers contemporary movies that are culturally appealing and commercial-free. The History Channel en Español programs provide enriching information about Hispanic roots and culture.

Cuban, and Puerto Rican — but also seeks to serve the needs and interests of the fast-growing presence of peoples from Central America, South America, and the Caribbean. Accordingly, individual Comcast systems have tailored their Hispanic programming line-up to meet local customers' preferences: in South Florida, customers can access Caribbean-influenced programs, while California-based subscribers can watch Mexican network fare.

Given the increasing level of competition in the MVPD marketplace, Comcast has every incentive to make serious efforts to appeal to the more than 3 million Hispanic households in the areas that it serves. Today Comcast offers its CableLatino and Selecto Hispanic programming packages in more than 15 DMAs across the nation, including Miami, the San Francisco Bay area, Northern California, Boston, Chicago, Philadelphia, Albuquerque, and New Jersey.³⁴³ In addition, Comcast customers with English-language packages who live in areas that offer the Hispanic packages can upgrade their cable service with 10 to 22 additional Spanish language channels and ON DEMAND en Español for an additional \$5 to \$15 per month.³⁴⁴ Comcast also has agreements with two Spanish-language content providers to offer Spanish-language news, lifestyle information, and video clips on its Web portal.

Comcast also offers a growing array of other international and multicultural channels. Comcast is constantly searching for ways to meet its viewers' diverse needs and interests. For example, in late 2004 in the Detroit area, Comcast began carrying Bridges TV, an unaffiliated lifestyle network focused on American Muslims. Comcast also owns AZN Television, which provides films, dramas, music, and news from Asia, as well as original programs produced in the

³⁴³ These packages offer customers some of the most popular Spanish and English-language Hispanic channels, including Casa Club TV, CineLatino, Cine Mexicano, CNN en Español, Discovery en Español, Fox Sports en Español, The History Channel en Español, MTV en Español, and Toon Disney, as well as 13 Spanish-language music channels.

³⁴⁴ This choice of programming is even available to customers as an upgrade of their basic cable service, without charge for a digital box.

United States specifically for English-speaking Asian-American audiences. In addition to these networks, Comcast provides or soon will provide unaffiliated Russian, Chinese, Indian, Korean, Arabic, Filipino, Portuguese, and Puerto Rican program networks. As noted above, competition from DBS, overbuilders and telco entry into video services guarantees that Comcast will continue seeking to attract viewers from all demographic groups within the communities it serves.

VOD and advanced services greatly expand Comcast's minority and international programming offerings. The growing availability of, and consumer interest in, VOD allows Comcast to provide even more programming appealing to interests of "niche" audiences, including but not limited to various minorities and other demographic groups. Even at this nascent stage, VOD services expand the availability of diverse programming options for viewers.

Current Comcast VOD offerings include minority-oriented programming in both foreign languages and English.³⁴⁵ No matter what their interests, customers can choose from more than 100 hours of free programming anytime, 24 hours a day, seven days a week. For example, AZN Television is preparing to launch the first nationwide compilation of non-Anglo, non-Spanish VOD of a meaningful size by offering 30 hours of its best pan-Asian programming.³⁴⁶ VOD's

³⁴⁵ Comcast's VOD offerings also include material to help bridge cultural divides, such as shows designed to teach children Spanish.

³⁴⁶ Similarly, the Comcast programming team is working on expanding its free VOD offering to include content from Asia Street, a program service set to launch in 2005, and four additional ethnic categories. In April 2005, Comcast announced carriage agreements with nine multicultural channels and on demand services. These new channels include, among others: GMA 7, offering news, public affairs and a variety of other programming presented as distributed in the Philippines; ITN, the only Russian family-friendly network broadcasting cultural, arts, religious, and educational programming in the U.S.; and TVK24, offering Korean Americans first-run programming never before seen in the U.S.

diverse programming also includes content such as BET programming and shows teaching children foreign languages.

Comcast takes advantage of VOD as a platform for offering a wider array of Hispanic programming. The company's 2004 launch of ON DEMAND en Español, a new video-on-demand service with DVD-like functionality, offers more Spanish language viewing choices than ever before. The program options available on ON DEMAND en Español continue to expand. For instance, Comcast recently added Fox Sports en Español to its ON DEMAND en Español lineup. ON DEMAND en Español is available at no additional charge to digital subscribers. Moreover, Spanish-language movies, available at a price comparable to a movie rental, provide an additional 15-20 hours of Latino-oriented language VOD programming each month.³⁴⁷ Like VOD, advanced services also provide additional avenues for offering diverse content. These new technologies are continually expanding the number of outlets through which diverse programming can reach minority and ethnic populations.

Comcast's support for multicultural content extends to the development of programming ventures owned by minority entrepreneurs. In seeking to find attractive programming to serve its diverse subscriber needs and interests, Comcast helps to nurture the success of minority entrepreneurs in creating and launching new programming services. For instance, TV One, a

³⁴⁷ VOD also includes an entire section devoted to Spanish-language programming entitled "Gratis en Español." Gratis en Español provides a variety of Spanish-language on-demand programming in categories ranging from Deportes (sports) and Musica (music), to Cine (movies), and Infantiles (children and family). For instance, current offerings under Deportes include programming such as the Americas Cup and other soccer games, as well as El Cinteron de Oro, for a variety of professional boxing matches. Programming currently listed under Infantiles includes "Chistipas," (two childhood best friends travel to different parts of the world and learn about technology, medicine, and agriculture), "El Nuevo Mundo de las Gnomos" (a cartoon called the New World of the Gnomes), "La Niña del Mar" (the story of the Little Girl of the Sea who fights to conserve the planet), and "Mi Gran Amigo," or My Best Friend (an educational program where stories are read for children and infants).

network targeting the African-American community that is majority owned by African-Americans, was created by a partnership between Radio One (the nation's leading African-American owned radio broadcasting chain) and Comcast, and debuted in January 2004. TV One was initially available in Washington, D.C.; Richmond; Baltimore; Atlanta; and Detroit, but since has spread to major metropolitan areas such as Dallas, Oakland, Los Angeles, Chicago, and Philadelphia. TV One currently reaches 20 million households and continues to grow — offering African American subscribers a significant new programming alternative to the decades-old BET and its affiliated offerings.

Comcast has also invested heavily in networks under daily operation of minority professionals. When Haitian-owned and operated cable programming channel HTN ("Haitian Television Network") in Miami was failing, Comcast invested money in the facility to ensure that its Haitian-oriented offerings would remain on Comcast's South Florida lineup. It remains the nation's first and only French/Creole language program channel.³⁴⁸ Comcast has made investments in other international and minority channels. For instance, in March 2005, the Comcast-owned International Channel renamed itself AZN Television and focuses on the Asian-American audience, including English-accessible Asian programming. In addition to its own channel, AZN also represents and distributes more than a dozen other networks from all over the world for distribution in the United States.

As the foregoing clearly shows, Comcast has a demonstrated commitment to serving multicultural audiences. It should be plain that the proposed Transactions will permit the company to extend the same wealth of programming options to its new subscribers. For minority customers of the less technologically sophisticated Adelphia systems, the Comcast acquisitions

³⁴⁸ See <http://www.htnsat.com/>.

are likely to significantly increase the range of programming tailored to serve their needs and interests.

- b. Comcast is interested in the potential of English-language Hispanic programming and thus has added such program channels to a dozen digital systems to date.

NHMC's assertion that Comcast is unwilling to provide English-language, Latino oriented programming is both factually inaccurate and procedurally irrelevant.³⁴⁹ As to the facts, even NHMC acknowledges that Comcast does, in fact, carry Si TV on multiple systems.³⁵⁰ At last count, the company carries the channel on at least 30 systems—including those serving communities with a significant Latino presence—mostly on digital tiers, that collectively reach almost a million subscribers. Si TV has been cleared to make its case for carriage to managers overseeing all local Comcast line-ups. Comcast also carries two other Hispanic channels that offer English-language programming, Mun2 and LATV.

The NHMC complaint apparently is rooted in its displeasure with Si TV's current carriage arrangements. Comcast has given Si TV the same opportunity that it has given to several other programmers by clearing it at the corporate level to sell itself to Comcast's markets. While this decentralized "hunting license" approach to carriage decisions may not be optimally efficient from the programmer standpoint, Comcast believes that it lets the company better serve local communities by putting a degree of decision-making authority in the hands of managers who are part of those communities.³⁵¹ Moreover, this approach is quite consistent with the Commission's long-standing interest in localism as a policy objective.

³⁴⁹ NHMC Comments at 6.

³⁵⁰ *Id.*

³⁵¹ Comcast's preferred approach to carriage decisions concerning new programming channels is to provide them with approval to negotiate with individual Comcast markets, rather than guarantee carriage on all of the company's systems. In some cases, established programmers

NHMC cannot be seriously suggesting that the Commission should mandate the impossible by requiring that Comcast make room immediately for any particular programmer on every system.³⁵² In evaluating carriage proposals, cable operators must consider the nature of the programming involved, target demographics, likely consumer appeal, similarities with other programming, cost, and other factors. In short, not every programmer can always obtain the carriage that it may want to believe it deserves.

NHMC presents no factual basis for insinuating that Comcast is disfavoring Si TV—or any other new programmer, minority oriented or not—by making carriage decisions on a local basis or by placing a new channel on a tier other than digital basic. Nor has Si TV itself placed any such concern in the record. The opportunity for digital carriage, in fact, makes it possible to get many new channels out to consumers as quickly and efficiently as possible.

Finally, the Commission should note that NHMC fails to tie its complaint to the Transactions at issue here in any way. This underscores the point that the Commission's grant of the pending Applications will have — and can have — no effect on Comcast's exercise of its broad constitutional rights to make its own decisions about the content it carries.

NHMC's request to the Commission to condition grant of the transfer applications upon Comcast's carriage of local and national English-language programming oriented to Latinos and other minorities is insupportable. Such action by the Commission would constitute an

leverage the appeal of their existing networks to require that Comcast meet "launch obligations" for their newer, less established networks. Such situations do have an impact on available bandwidth, but they fall within the scope of the retransmission consent statutory scheme—and therefore reflect a policy decision made by Congress, not Comcast. *See* Section III.E.3, discussing Congress' comprehensive statutory scheme regarding carriage of broadcast signals. Comcast strongly prefers the "hunting license" paradigm because it permits local markets to make launch decisions based on local conditions.

³⁵² For example, while Comcast has carriage agreements with 50 Hispanic channels, it simply cannot carry each of these channels on every system.

unprecedented intrusion into MVPDs' right to select content. Moreover, the Commission lacks power in this instance to encroach upon Comcast's First Amendment rights. The Commission's authority to regulate programming content is narrowly limited to serve only non-content-based objectives pursuant to explicit congressional directives. As a matter of both statutory and constitutional law, the Commission cannot require carriage of cable networks based on the content of their programming.³⁵³

If a programmer has a specific program carriage concern, they are established Commission procedures for resolving the issue. A programmer aggrieved by conduct it believes constitutes a violation of the Communications Act's carriage mandates may file a complaint to initiate an adjudicatory proceeding at the Commission to obtain enforcement of the rules.³⁵⁴

- c. Time Warner Cable and Comcast provide service throughout their systems without discrimination based on economic or ethnic status.

The Commission may also be assured that, contrary to the unsupported allegations of some commenters, Comcast and Time Warner Cable will complete their upgrades of the Adelphia systems in a fair and non-discriminatory way. Both companies emphatically deny that they have or will engage in any sort of economic or other redlining. NHMC's unwarranted and unsubstantiated assertion that Comcast and Time Warner Cable have a history of electronic redlining in minority communities with respect to the deployment of advanced services is

³⁵³ See 47 U.S.C. § 544(f). Content-based regulation of cable television can be upheld in the face of a First Amendment challenge only if it survives "strict scrutiny," *i.e.*, if it represents "the least restrictive means" of advancing a "compelling governmental interest." *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 812-13 (2000). As the Supreme Court has stated, "[i]t is rare that a regulation restricting speech because of its content will ever be permissible." *Id.* at 882. In these circumstances, it is almost inconceivable that government-mandated carriage of English-language Hispanic programming would survive First Amendment scrutiny.

³⁵⁴ 47 C.F.R. § 76.1302.

false.³⁵⁵ To the contrary, both companies are deeply committed to upgrading their cable systems and improving services for *all* of their subscribers, including those in low-income areas.

In fact, Comcast's historical practice has been to focus on bringing service to low income and minority areas *first*—as a matter of company policy, not simply to satisfy promises to federal regulators. For example, Comcast began upgrading its system in Flint, Michigan (one of the most economically depressed cities in the region) in 1998 so that the company could provide consumers there with more channels and advanced services. The first upgraded neighborhoods were those in the southern portion of Flint, the poorest part of the city.³⁵⁶ In Albuquerque, New Mexico, low-income neighborhoods in the Uptown area, South Valley and Southern Heights were also among the first to be upgraded to allow for digital and high-speed Internet service (in the first two phases out of eight) with upgrades completed in 2000-2001. Similarly, early in its rebuild of the Greater Chicago area systems, Comcast rebuilt several communities that have a high percentage of families living below the poverty line. In particular, Comcast rebuilt the community of Ford Heights, in which 45 percent of families live below the poverty line, as well as the entire Kankakee system, in which 18.1 percent of families live below the poverty line.³⁵⁷ When Comcast acquired the Washington, D.C. system from AT&T Broadband, Anacostia was the first neighborhood in which Comcast completed its network upgrade and launched advanced services.³⁵⁸ Similarly, three lower-income neighborhoods in Baltimore – Patterson Park, Druid Heights, and Hamilton Hills – were among the very first neighborhoods to be upgraded.

³⁵⁵ See NHMC Comments at 3; MAP Comments at 3.

³⁵⁶ Doug Pullen, *Comcast to Rebuild System*, The Flint Journal, Jan. 10, 1998, at A11.

³⁵⁷ *Id.* According to the 2000 U.S. census, the average percentage of families in a given area living below the poverty line is 9.2 percent.

³⁵⁸ Ellen McCarthy, *Program Puts Free Internet in D.C. Schools*, The Washington Post, Mar. 28, 2002, at EO5.

Time Warner Cable's history of giving top priority to the upgrade of disadvantaged neighborhoods is equally commendable. For example, among the first Time Warner Cable systems to be upgraded in 1998 as part of the \$5 billion company-wide program was El Paso, Texas, one of the most demographically challenged systems owned by the company at the time. Similarly, in undertaking the upgrade of its Minneapolis system in 1999, the company first completed work in north Minneapolis, the lowest socio-economic area in the City; the higher income areas were completed last. The same is true in Northeast Ohio, where Time Warner Cable upgraded the low income, inner-city areas of Akron, Canton, and Youngstown in 1993, 1994, and 1995, respectively. Time Warner Cable upgraded the Mansfield, Ohio system within 18 months after taking over from Adelphia in 1998, and the low income communities of Warren, Norwalk and Kent/Ravenna, Ohio were upgraded within a year after the acquisition from TCI. And this policy of nondiscrimination is not confined to urban areas. In 2001, Time Warner Cable completed the upgrade and interconnection of 40 rural communities in far-south Texas, including Roma and Rio Grande City, both in Starr County, one of the poorest in the nation with nearly 40 percent of its residents living below the federal poverty line.

NHMC's comments are bereft of evidence that would undermine these facts. Indeed, its baseless and insulting claims are directly contrary to the observation made by Commissioner Copps when Comcast announced its completion of its network upgrade in Anacostia. At that time, he observed: *"This is a good and happy occasion for someone like me, who spends a lot of time talking about the digital divide, to come here and see something actually being done about the digital divide."*³⁵⁹ Commissioner Copps also noted that Comcast's commitment to public

³⁵⁹ *Id.*

education is an example he hopes other corporations will follow.³⁶⁰

NHMC's unsubstantiated allegations are also refuted by numerous commenters who have filed in support of the Transactions on *precisely* this issue. For example, the Black Leadership Forum commended the commitment of substantial resources by Comcast and Time Warner Cable to high quality and advanced communication services in predominantly low-income and minority communities.³⁶¹ Similarly, the Urban League of Greater Hartford noted that both Comcast and Time Warner Cable fully support anti-redlining provisions in a variety of legal contexts and that *all* residents of the franchise areas will benefit from the parties' increased investment.³⁶²

In short, as this history clearly demonstrates, Time Warner Cable and Comcast believe that electronic redlining is contrary to the public interest, have not engaged in it, and have taken affirmative steps to prevent it. Time Warner Cable and Comcast will continue to upgrade their networks and deploy advanced services in all areas, especially those with high percentages of minority and low-income residents. NHMC's concerns are not founded on fact and their call for special requirements can safely be dismissed.

8. Employment issues are not appropriately addressed in this proceeding.

Finally, the Commission should summarily reject the calls of NHMC and CWA to impose employment-related conditions on the grant of the Applications. Neither commenter has presented any facts that would justify a wholly unprecedented intervention by the Commission here into the details of the employment relationships between Comcast and its workers. To the

³⁶⁰ *Id.*

³⁶¹ BLF Comments at 2; Comments of National Congress of Black Women, Inc. at 1.

³⁶² Urban League of Greater Hartford, Inc. Comments at 2 ("Comcast and Time Warner have both said that they support... anti-redlining provisions, thereby ensuring that all residents in their franchise areas will be the beneficiaries of their new investments").

contrary, to the degree that CWA's concerns have any substance, its petition makes quite clear that the unions are aware of, and actively use, the federal fora that are specifically designed to deal with labor/management issues. Moreover, neither NHMC nor CWA demonstrate how the proposed Transactions have any connection to the matters they raise.

- a. The employment structures of the Applicants reflect the diversity of the communities they serve.

NHMC claims here, as it has in other settings, that Comcast's Hispanic hiring practices are inadequate.³⁶³ Quite the contrary, Comcast provides equal opportunities in employment and is succeeding in its efforts to establish a diverse workforce. At the end of 2004, approximately 40 percent of all Comcast Cable employees were minorities and 37 percent were women. These groups also are a growing part of Comcast Cable's senior management. Thirty percent of Comcast's senior managers (directors and above) are women and 14 percent are minorities. In the last two years, more than 40 percent of Comcast Cable employees promoted were minorities and 30 percent were women, demonstrating Comcast's increased commitment to the promotion of minorities and women.

Other commenters in this proceeding recognize Comcast's solid record in minority hiring. Both the National Congress of Black Women and the National Black Chamber of Commerce pointed to Comcast's strong record of diversity in both programming and hiring. Comcast's commitment to minority hiring is also reflected by its corporate programs and community activities intended to implement the company's diversity initiatives. For instance, the company has established a Diversity Management Council, comprised of senior executives representing Comcast's business units and department. The Council is charged with translating the company's business philosophy regarding diversity into actionable initiatives within each of

³⁶³ NHMC Comments at 5-6.

its operating divisions. Comcast also actively engages in hundreds of career events annually, and is continually focusing on community events to recruit minorities for positions with the company.³⁶⁴

As a complement to ongoing hiring efforts, the company engages in several efforts designed to help new entrants in the industry rise in rank. In 1999, the company established its "Comcast University" program to help develop and cultivate future leaders. Comcast has identified a number of high-performing Hispanic employees, among others, to participate in one of the elite leadership programs supported by Comcast University or industry organizations supported by Comcast, including the Executive Leadership Forum and the Fundamentals Leadership Program.³⁶⁵

³⁶⁴ Over the next month, for example, Comcast is committed to attending the 26th Annual Chinatown Summer Fair in Chicago, the East Bay Diversity Job Expo in Oakland, and the Comcast Diversity Breakfast in Lebanon, Pennsylvania. Comcast also engages in recruitment events organized by the Hispanic Alliance for Career Enhancement and the National Hispanic MBAs.

³⁶⁵ Comcast University offers a wide variety of courses that foster the development of employees' business, social and leadership skills. The University offers more than 50 courses in leadership development, including "Essentials of Management: Succeeding as a New Manager," "Executive-Level Leadership: Becoming an Executive Leader," "Mentoring: Developing Mentoring Skills," "Moving From Technical Professional to Management: Getting Started," and "The Power of Nice: Negotiation Skills." In addition to courses that cultivate existing leadership skills, the University offers a number of introductory leadership courses such as "First-time Leader: Transition Into Leadership," "First-time Leader: Working With People," "Introduction to Leadership: Understanding Your Role & Establishing Credibility," and "Introduction to Leadership: Business Ethics & Etiquette" that focus on building fundamental leadership skills. Other introductory leadership courses focus on topics such as task/time management, handling change, hiring support, delivering feedback, coaching, relationship management and inspiring commitment. The University also offers courses focusing on business solutions, such as "Business Problem Solving: Critical Thinking and Information Analysis," which teaches trainees about critical thinking, reasoning abilities, techniques for quantitative and financial analysis and forecasting, as well as the fundamentals of qualitative analysis and creative thinking. Finally, the University offers a course entitled "Achieving in the Futuristic Workplace," which provides insights into the need for diversity in the evolving business world. Comcast University courses are available at the company's headquarters in Philadelphia and all major Comcast markets.

Comcast has been particularly attentive to the interests and needs of the Hispanic community.³⁶⁶ Comcast is partnering with organizations that specialize in connecting Hispanic professionals with corporate employment opportunities. Comcast has adopted a decentralized approach that focuses on local community partners, such as local chapters of the Urban League, to announce job openings and conduct seminars on resume writing, interviewing, and other career topics.³⁶⁷

These efforts have led to noticeable results. While NHMC claims that Comcast has made little progress in hiring minorities since its acquisition of AT&T Broadband in 2002, Comcast actually has increased the total number of Hispanic employees 250% since the acquisition, growing from 2,000 to 7,000 employees. The number of Hispanic employees in management ranks has increased by a similar percentage.

Given Comcast's proven commitment to diversity, NHMC's proposal that the grant of the applications be conditioned on Comcast providing quarterly reports on minority recruiting is unreasonable and unnecessary.³⁶⁸ The company already is complying with all applicable EEO reporting requirements, including but not limited to the Commission's own MVPD EEO rules,

³⁶⁶ Although Comcast's relatively small Board of Directors currently does not include Hispanic members, NHMC Comments at 5, the Board's Governance and Nominating Committee has identified diversity—including Hispanic representation—as an important factor for future director nominees.

³⁶⁷ Comcast has also partnered with Hispanic organizations at the corporate level. Comcast was the title sponsor for the National Council of La Raza's ("NCLR") 2005 annual conference. NCLR is the country's largest national Hispanic civil rights and advocacy organization.

³⁶⁸ NHMC Comments at 8.

which focus heavily on recruitment.³⁶⁹ NHMC has utterly failed to demonstrate why Comcast's compliance with existing regulations is not sufficient.

b. The vendors employed by Comcast similarly are highly diverse.

Comcast's commitment to diversity extends to the suppliers and vendors with which it does business. In 2004, the company increased its percentage of spending with diversity businesses by 22 percent. Also in 2004, Comcast was named one of America's Top 50 corporations for multicultural business opportunities by DiversityBusiness.com, the largest organization of women and minority-owned businesses in the United States.³⁷⁰ In addition, Comcast was named one of the top 10 companies for supplier diversity in 2005 by DiversityInc Magazine.

In 1999, Comcast implemented its formal Supplier Diversity Program to promote use of minority suppliers in the procurement process. Under the Program, Comcast is constantly seeking bids from minority businesses and researching ways to position the company for additional contracts with minority companies. Its goal is to make sure the company's purchasing behavior is responsible and that Comcast seeks out minority and women-owned businesses in the communities where it is located. For instance, when Comcast acquired AT&T Broadband in 2002, it hired four major contractors to upgrade the AT&T Broadband systems. One of those

³⁶⁹ Comcast even voluntarily complied with the Commission's previous EEO rules after they were struck down in federal court in 2001. *DC/MD/DE Broadcasters Ass'n v. FCC*, 236 F. 3d 13 (D.C. Cir. 2001).

³⁷⁰ See Comcast Named One of America's Top 50 Corporations for Multichannel Business Opportunities, Women and Minority-Owned Businesses Recognize Comcast's Diversity Initiatives, Comcast Press Release (December 15, 2004), available at <http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&t=Regular&id=655>.

contractors, MasTec, was a Hispanic company that received hundreds of millions of dollars for its work upgrading the systems.³⁷¹

To ensure continuous improvement in the Supplier Diversity Program, Comcast has implemented a Supplier Diversity Scorecard, measuring past performance, actual year-to-date performance, and goal achievement across all divisions. Comcast looks forward to bringing its strong diversity-oriented commitment to the additional communities it will serve as a result of the Transactions.

c. Claims that the Applicants engage in anti-union practices are meritless and have no nexus to the instant proceeding.

The Commission should dismiss out of hand the attempt by CWA to turn the FCC into a shadow version of the National Labor Relations Board.³⁷² The CWA comments amply illustrate that its issues with Comcast predate the Applications here and are being resolved, as Congress has intended, by processes set forth under the National Labor Relations Act (“NLRA”). CWA’s grievances plainly have no nexus to the proposed Transactions. They offer no grounds for reversing the Commission’s long-standing policy against involving itself in private contractual disputes—including but not limited to those concerning employment matters.³⁷³ Indeed, a thorough review of Commission decisions shows absolutely no precedent for the type of labor-related intervention that CWA apparently seeks.

³⁷¹ As the National Black Chamber of Commerce notes, the pledges by Comcast and Time Warner Cable to upgrade Adelphia’s cable systems will lead to additional opportunities for small businesses to bid for subcontracts. National Black Chamber of Commerce Comments at 1-2. The Black Leadership Forum also notes that Comcast has been exemplary in the area of business procurement.

³⁷² See CWA Comments at 23-25.

³⁷³ See, e.g., *Actions Taken Under Cable Landing License Act*, 20 FCC Rcd 8557, n. 12 (2005).

It is unusual that CWA seems to think that the FCC should ignore the existence of a sister federal agency, the National Labor Relations Board ("NLRB"). That agency is the appropriate forum for resolving claims of unfair labor practices—and CWA has proven itself to be quite aware of its existence. CWA's comments tacitly concede the point by describing various cases in which the parties have appeared before the NLRB.³⁷⁴

Moreover, the matters in litigation establish no basis for calling Comcast's character qualifications into question. Comcast is proud of its record as an employer, and the company puts a high value on its positive relationships with its many employees, whether unionized or not. Comcast's corporate policy is to respect workers' right to organize, and the company will continue to abide by relevant labor laws and the terms of bargaining unit agreements it now has with IBEW and CWA or may have in the future. (In fact, in the past 18 months, Comcast has negotiated 10 collective bargaining agreements across the country.) Comcast also will respect existing contracts with Adelphia employees following the proposed Transactions. The NLRB cases cited by CWA are isolated incidents that do not reflect Comcast's general corporate policy and practices.³⁷⁵

³⁷⁴ CWA Comments at 23-25.

³⁷⁵ CWA's complaints are irrelevant to this proceeding. CWA goes on at length about various cases that have already been adjudicated. First, although an Administrative Law Judge ("ALJ") for the NLRB ruled Comcast illegally fired employees in Lanham, Maryland, Comcast recently resolved this case on terms that included eliminating the ALJ's decision to reinstate the two employees and the ALJ's list of Comcast's violations of the law. Second, the unions allege that Comcast fired two technicians who were union supporters in Pittsburgh. Comcast has never fired or disciplined these or other employees for participating in union organizing activities, and was found to be without fault in this case. With respect to the complaint that Pittsburgh workers have continued to push for a first contract, Comcast has negotiated in good faith with the CWA. Third, despite claims that a Beaver Falls worker was fired for trying to organize a union, Comcast makes employment decisions based on merit, not union activity. Comcast was again not found to be at fault in this case. Fourth, with respect to claims that Comcast fired a union supporter in Hialeah, Florida, Comcast settled the case following an NLRB complaint. It is important to note that an NLRB complaint is not a finding of fault. Fifth, in Ocean City,

In addition to respecting workers' rights to organize and bargain collectively, Comcast also believes employees should have the freedom to choose whether to work in a union environment. As an employer, Comcast invests significant levels of resources and energy in its employees, including competitive wages and progressive benefits packages, comprehensive training and job enrichment programs. Comcast's pro-worker policies are also reflected by the many awards the company has won for its workplace environment.³⁷⁶ As a result of these corporate policies, Comcast employees frequently opt against unionizing. The fact that most Comcast employees who have been involved in labor campaigns have declined union representation reflects Comcast's pro-worker policies, not attacks on the collective bargaining process.³⁷⁷

Maryland, employees decertified the union because they were dissatisfied with the union's inability to secure a contract after many bargaining sessions, not because Comcast orchestrated a decertification campaign. Sixth, in Sacramento, as elsewhere, Comcast has abided by the labor laws and has not refused to respect workers' rights. While the CWA claims that Comcast adopted tactics to decertify a Sacramento union in 2003, the NLRB certified the elections over the objection of the union. Seventh, and similarly, in Los Angeles, the unions' petition claims that Comcast pressured workers to decertify; however, as with the decertification election in Sacramento, the NLRB certified the elections over the objection of the unions. Finally, claims that Comcast influenced a decertification election in Illinois were dismissed by the NLRB at the regional level, again rejecting a similar charge by the union.

³⁷⁶ In 2005, Comcast has been named on the following lists: "100 Best Companies to Work for in Oregon" by Oregon Business; "101 Best & Brightest Companies to Work For" by the Michigan Business & Professional Association; "Best Places to Work" by Seattle Magazine, Boston Business Journal, and Grand Rapids Business Journal; and "Best Employers" by Crain's Chicago Business. Comcast was also awarded "Employer of the Year" by Arkansas Business & Professional Women.

³⁷⁷ By law, employees must initiate the union-organizing process completely on their own and with no encouragement, support, or assistance from the company at issue. Where allegations of fomenting decertification have arisen, the charges have been found to be without merit. Not only is Comcast committed to pro-worker policies, but as several commenters noted, the acquisition of a bankrupt cable company by Comcast and Time Warner will also help save jobs. See NDN Comments; National Congress of Black Women Comments.

In short, CWA presents no justification for the Commission to either expend its limited resources to address matters appropriately under the purview of another expert agency or inquire further into purported character questions. To the contrary, CWA's comments appear to fall into a recent pattern on the unions' part of using collateral opportunities to goad the company into acquiescing to CWA's wishes in union organizing and collective bargaining efforts.³⁷⁸ The Commission accordingly should dismiss CWA's calls for labor-oriented conditions.


³⁷⁸ See, e.g., Complaint of the Communications Workers of America and International Brotherhood of Electrical Workers Against Comcast Corporation for Violation of Commission's Part 76 Public File Rules (filed November 26, 2003) and the subsequent consent decree issued by the Commission resolving the matter, *In the Matter of Comcast Corporation, Operator of Cable Television Systems in Numerous Communities*, File No. EB-03-IH-0558 (released October 22, 2004). See also CWA's "Adelphia-Time Warner-Comcast Local Intervention Guide," which is posted on CWA's anti-Comcast website, www.comcastwatch.com ("The purpose of this guide is to assist CWA locals to get involved in the local franchise review of the Adelphia-Time Warner-Comcast transaction.").

VII. CONCLUSION

For the foregoing reasons, and based on the showings in the Parties' Public Interest Statement, and the individual Applications, the proposed Transactions will serve the public interest. The Parties respectfully request that the Commission promptly and unconditionally grant the Applications.


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Exhibit A

Description of Commenters in Support of the Applications

Americans for Prosperity

(More than 300,000 members. See < <http://www.americansforprosperity.org/>>)

- A national organization of "citizen leaders" created to advance the individual right to economic freedom and opportunity by reducing the size and scope of government.
- Educates citizens in support of restraining state and federal government growth and returning government to its constitutional limits.

Americans for Tax Reform

(Works with approximately 800 state- and county-level groups. See <<http://www.atr.org/home/about/index.html>>)

- Founded in 1985 at the request of President Ronald Reagan, strives to bring tax relief to Americans and stop new avenues of taxation.
- Sponsored the Taxpayer Protection Pledge, a written promise in which legislators and candidates for office commit to oppose any effort to increase the federal income taxes on individuals and businesses.

Black Leadership Forum

(Comprises 20 organizations representing 15 million. See <http://www.blackleadershipforum.org/>>)

- Founded in 1977, as a confederation of civil rights and service organizations committed to empowering African Americans to improve their own lives and expand their opportunities in America socially, economically and politically.
- Economic empowerment is at the center of group's goals.
- Comprises more than 20 organizations (including NAACP, National Urban League and Southern Christian Leadership Conference) representing nearly 15 million African Americans.

Faith and Family Broadcasting Coalition

(Comprises over half a dozen religious entities active in the public policy arena. See <<http://www.faithandfamilytv.com/>>)

- A group of religious broadcasters, programmers, ministers, listeners and supporters dedicated to promoting more religious- and family-based broadcasting.
- Opposed proposed federal regulations regarding *a la carte* cable pricing, believing that it would decimate both the audience and financial support for religious broadcasting.
- Supporters include The Christian Broadcasting Network, Old Time Gospel Hour, FamilyNet TV, Trinity Broadcasting Network, American Center for Law and Justice Inc., Benny Hinn Ministries, and John Hagee Ministries.

Freedom Works

(More than 700,000 members. See <<http://www.freedomworks.org>>)

- A grassroots organization promoting market-based solutions to public policy problems. Recruits, trains and educates volunteer activists to fight for less government, lower taxes and more freedom.
- Believes consumers are better served by a competitive, deregulated telecommunications market than the old model of government-enforced regulated monopolies.

Progress and Freedom Foundation

(Think tank – no membership. See <<http://www.pff.org>>)

- Market-oriented think tank that studies the digital revolution and its implications for public policy. Located in Washington, D.C., and founded in 1993 as a 501(c)(3) nonprofit organization. Educates policymakers, opinion leaders and the public about issues associated with technological change, based on a philosophy of limited government, free markets and individual sovereignty.
- Supporters include, Alston & Bird, Apple, BellSouth, BMG, Business Software Alliance, Cisco, Clear Channel Communications, Comcast Corporation, Disney, eBay, Echostar, Google, Hewlett-Packard Company, Intel, MCI, MGM, Motorola, Microsoft, NBC Universal, Nextel Communications, Progress Energy, Qwest Communications, SBC Communications, Sony Music Entertainment Inc., Sprint, Time Warner, T-Mobile, Verizon, Viacom, and Visa USA.

National Black Chamber of Commerce

(Represents 188 affiliates and 64,000 membership businesses. See <<http://www.nationalbcc.org>>)

- Dedicated to economically empowering and sustaining African American communities through entrepreneurship and capitalistic activity within the United States and via interaction with the black diaspora. Incorporated in Washington, D.C. in March 1993. Represents 95,000 black-owned businesses and provides advocacy that touches all 1 million black-owned businesses.
- Nonprofit, nonpartisan, nonsectarian organization. 190 affiliated chapters are locally based throughout the nation; international affiliate chapters based in Bahamas, Brazil, Colombia, Ghana and Jamaica.
- On the leading edge of educating and training black communities on the need to participate vigorously in our capitalistic society. Provides unique opportunities for corporations and African American businesses to partner in creating greater opportunity for all people.

National Congress of Black Women

(See <<http://www.npcbw.org>>)

- Formerly The National Political Congress of Black Women founded August 2, 1984 in Washington, D.C.
- Non-partisan organization dedicated to the political empowerment of African-American women through the following activities: (1) identify, elect and act as mentors to African-American women; (2) encourage African-American women to engage in political activities; (3) offer training to African-American women to assist them in understanding and operating within the political process; (4) encourage African-American women to seek government office; (5) develop and advocate public policy positions at every level of government; and (6) prepare younger African-American females to enter the political process.
- Turned the spotlight on African-American women and ushered in an era of unprecedented growth of African-American female participation in the political process. The number of African-American women elected officials has increased steadily from 1223 black women holding elective office in 1983, to 2332 holding office by 1993.

National Braille Press

(See <<http://www.nbp.org/>>)

- Boston-based nonprofit Braille printing and publishing house founded in 1927. Last year pressed 15 million Braille pages using special translation software and computer-driven equipment. Promotes the literacy of blind children through Braille and provides access to information that empowers blind people to actively engage in work, family, and community affairs.
- Believes that blind people can, want to, and should work for companies that value talent and hard work above all. One third of staff has a disability, predominantly blindness, filling positions at all levels (including the president).

NDN

(See <<http://www.ndn.org/>>)

- National membership organization which promotes strategies to modernize progressive politics and invests in a new generation of emerging leaders. Works with other allied groups to build a strong, vibrant and powerful progressive politics capable of meeting the challenges of the 21st century. Also works through two affiliates, the NDN Political Fund, a non-federal political organization, and NDN PAC, a federal political action committee.
- NDN receives important counsel from leading strategists who form NDN's Advisory Board, including Joe Andrew, former Democratic National Committee Chairman; Sergio Bendixen, pollster and Latino expert; Vic Fazio, former U.S. Representative, who was chairman of the Democratic Congressional Campaign Committee; Ron Kirk, former Dallas Mayor and 2002 Texas Democratic U.S. Senate nominee; Dave McCurdy, former Democratic Leadership Council Chairman; Mike McCurry, former White House Press Secretary; Mack McLarty, former White House Chief of Staff; Morris Reid, Founding Partner and Managing Director of the Westin Rinehart Group; Jonah Seiger, Internet pioneer and strategist; Robert Shapiro, economist and former Under Secretary of

Commerce; Rob Stein, former Commerce Department Chief of Staff and private equity investor; and Christine Varney, former Federal Trade Commissioner.

Urban League of Greater Hartford Inc.

(See <<http://www.volunteersolutions.org/uwcact/org/217620.html>>)

- Founded in 1964 and remains the only professionally instituted, not-for-profit agency targeted to the Greater Hartford African American Community. One of the largest direct social services agencies in New England. Dedicated to providing African-Americans and the disadvantaged with opportunities to gain and use skills and knowledge to enable them to become self-sufficient, self-reliant, and self-respecting citizens. One of 114 affiliates of the National Urban League. Organized in a traditional Urban League structure under the headings of Education, Employment and Training, Health and Human Services, Housing, and Economic Development.



B

Exhibit B

Comcast: Promises Made, Promises Kept

As part of the application process of the Comcast-AT&T Broadband transaction, Comcast committed to: (1) rapidly upgrade systems to accelerate broadband deployment and provide customers with access to more advanced services, such as digital video, video on demand (“VOD”), high definition television (“HDTV”), digital video recorders (“DVRs”), and competitive telephony; (2) improve customer service in the systems; and (3) meet the needs of local communities.¹ Since consummation of the merger, Comcast has fulfilled all of these pledges.

1. System Upgrades

Over the last several decades, Comcast has demonstrated its dedication to upgrading its network. In 2003 alone, Comcast spent \$1.3 billion on system upgrades, primarily dedicated to former AT&T systems that had lagged behind Comcast in the provision of state-of-the-art services to consumers.² Set out below is a description of the significant pro-consumer, pro-competition upgrades Comcast accomplished in specific systems it acquired from AT&T Broadband.

San Francisco Bay Area—Since 2002, Comcast has invested \$600 million in rebuilding and upgrading the technical capacity of the former San Francisco Bay area AT&T Broadband systems by installing over 11,000 miles of fiber-optic plant throughout the Bay area; the systems had essentially no upgraded plant prior to the AT&T Broadband acquisition. This investment

¹ See generally Applications for Consent to the Transfer of Control of Licenses, Comcast Corporation and AT&T Corp., MB Docket No. 02-70 (filed Feb. 28, 2002).

² *Id.*

allowed Comcast to introduce HDTV, VOD, and DVR services, and also to increase its high-speed Internet speeds. As a result, less than three years after the acquisition of these systems, almost half of the company's 1.6 million customers in the Bay area currently subscribe to Comcast Digital Cable, more than 3% subscribe to HDTV, and approximately 80% enjoy access to VOD. High-speed Internet at speeds up to 3 Mbps is now fully deployed in the Bay area. Comcast's Bay area cable subscribers now have access to 80 analog channels, 139 digital channels, 16 high-definition channels, 46 digital music channels, 9 minority-oriented channels, and 42 foreign language channels.³

Jacksonville, FL—Comcast's experience in the Jacksonville market is representative of the manner in which the company keeps its commitments. Before Comcast acquired the AT&T Broadband facility in Jacksonville, the system's capacity was 550 MHz; customers had access to only 50 analog channels, 40 digital channels; there was no VOD, no HD networks, and no DVR functionality in the set-top boxes. There were also only three minority-oriented programming channels and one foreign language programming channel. Upon acquisition, Comcast devoted significant resources to this system and completed the long-promised upgrade ahead of plan. The system's capacity today is 750-860 MHz and customers now have access to 75 analog channels, more than 150 digital channels, VOD, 14 high definition channels, four minority-oriented programming channels, 11 foreign language programming channels, and DVR set top box functionality. Jacksonville's customer service record has improved dramatically – 90% of calls are now answered within 30 seconds. Finally, customers also will soon have access to high-speed Internet services at speeds up to 8 Mbps, as well as digital voice offerings.

³ Prior to Comcast's acquisition of the San Francisco systems, customers only had access to 56 analog channels, 51 digital channels, no high-definition channels, 17 digital music channels, 5 minority-oriented channels, and 4 foreign language channels. In addition, high-speed Internet via cable was not available in the San Francisco Bay area prior to Comcast's acquisition.

Chicago—In November 2004, Comcast completed a \$450 million upgrade of its broadband network in Chicago. This effort included upgrading and constructing more than 10,000 miles of broadband networks and ultimately resulted in increased system and service reliability, as well as the availability of a wide variety of advanced products and services. Due to these efforts, Chicago consumers now have access to over 230 digital channels, 16 high-definition channels, 11 minority-oriented channels, and 42 foreign language channels. In addition, 99.6% of homes have Comcast on Demand, with over 1,500 hours of programming, and high-speed Internet access of up to 6 Mbps.

In short, when Comcast commits – as it has in this proceeding – to rapidly upgrade cable systems it acquires and to improve the quality and quantity of services delivered by those systems to consumers, the Commission can look at the AT&T Broadband experience as strong evidence that the company will meet those commitments.

2. Customer Service Improvements

Comcast also is committed to raising the standard of customer service in each and every one of its franchise areas.⁴ The company has devoted substantial effort to increasing its customer service and, as a result, has succeeded in increasing consumers' overall satisfaction with the

⁴ In its Petition, DIRECTV claims that both Comcast and Time Warner have underperformed in customer satisfaction ratings. Comments of DIRECTV, Inc., MB Docket No. 05-192, 37-39 (filed July 21, 2005).

cable industry.⁵ In addition, Comcast's customer service complaints have steadily decreased from year to year.⁶

When Comcast acquired AT&T Broadband, most of AT&T's customer service was outsourced to third party vendors who operated call centers frequently located far from local communities. The customer service in these systems was poor. Comcast invested more than \$90 million to open eight new call centers and to expand seven other call centers, bringing in-house the vast majority of cable service calls from former AT&T customers. In addition, Comcast hired more than 600 additional local call center and field representatives and created a national 1-800-COMCAST number and an online chat website so that customers could contact the company more easily. The company also expanded its morning and late evening appointment offerings, increased the number of technicians available on weekends, shortened most appointment windows to between two and three hours, and eliminated appointment windows longer than four hours. As a result of these initiatives, Comcast's customer satisfaction rating for the first quarter of 2005 jumped 13% from its rating for the first quarter of 2004.

Many of these initiatives focused on improving customer service at the local level. For example, in New England, the company built brand new call centers in Connecticut and New Hampshire and expanded four call centers in Massachusetts. Similarly, Comcast opened new call centers in Concord and Morgan Hill in the San Francisco area and expanded the Livermore call center. These expansions resulted in 1,100 new local jobs, with customers benefiting from

⁵ In 2004, consumers overall satisfaction with cable improved at almost twice the rate of satellite (3.1% v. 1.6%). Press Release, J.D. Power and Associates Reports: As Satellite TV Penetration Grows, Overall Customer Satisfaction among Satellite Subscribers Continues to Top Cable (Aug. 18, 2004).

⁶ The number of complaints decreased by 38% between 2003 and 2004, 19% between 2002 and 2003, and 6% between 2001 and 2002.

the more efficient customer service operations, staffed with representatives who knew about their specific communities. As a result, local customer service surveys show that San Francisco customers are generally more satisfied with their cable service under Comcast ownership than they were under AT&T Broadband ownership.

Comcast concluded that AT&T Broadband's policy of centralized decision-making authority produced systems that were insufficiently responsive to local customer service needs. For example, in Jacksonville, Florida, the AT&T Broadband system acquired by Comcast was plagued by poor service, high customer dissatisfaction, high subscriber loss, strained relations with local franchise officials, and a pending franchise revocation proceeding. To remedy these problems, the company brought in seasoned management with deep operational experience, set clear quality standards for all departments, promoted a collegial work environment, and established a Special Assistance Line that allowed employees in the field to contact the call center directly to deal with customer issues on the spot. Comcast Corporate and Division staff also engaged directly with Jacksonville officials to address outstanding issues and concerns, and turned a potential franchise revocation into a successful renewal.

The company has taken a similar approach with other acquired systems. For example, in the San Francisco Bay area, Comcast replaced an inefficient, centralized operating center with five largely autonomous system offices. Each system office now has its own area vice president and directors of marketing, finance, human resources, technical operations, and government affairs. The New England region has been likewise decentralized into five operating areas, bringing local management and decision-making closer to the customer. This use of local management ensures that the unique needs of individual communities are understood and addressed.

3. Meeting The Needs Of Local Communities

As Comcast has grown, it also has maintained its commitment to meeting the unique needs of local communities.⁷ The company has worked with its communities to ensure that local schools and libraries have access to the communications services they need. In upgrading its broadband network in Anacostia,⁸ Comcast has worked to provide a free high-speed Internet connection to many public schools and libraries there.⁹ To date, the company has connected more than 300 schools in the Washington metropolitan area to the Internet. And, through the Comcast Community Connection program, the company is working to bring access to broadband technologies into after-school programs and community centers in neighborhoods where in-home computer penetration is below 40%.

In addition, Comcast developed Comcast Technology Academy, which trained more than 4,100 attendees from across the greater Washington, D.C. region in the use of broadband technology.¹⁰ The company has continued to provide a range of other technology and learning opportunities to schoolchildren, such as partnering with C-SPAN for the award-winning

⁷ See, e.g., Letter to Chairman Martin and Commissioners Abernathy, Copps, and Adelstein, from William M. Raeder, President, National Braille Press, MB Docket No. 05-192, 1 (filed July 14, 2005) (stating that “both companies have proven to be strong corporate partners with the communities they serve”).

⁸ See Ellen McCarthy, *Program Puts Free Internet in D.C. Schools*, The Washington Post.

⁹ *Id.* Comcast plans to extend this program to public schools and libraries in all of its service areas.

¹⁰ News Release, Comcast, The Comcast Foundation and Cable in the Classroom Announce the Launch of the Comcast Technology Academy in Montgomery County (Feb. 21, 2001) (announcing the launch of Comcast Technology Academy, which provides local educators with free technology training that can be used to enhance educational opportunities for students).

"Students & Leaders" series.¹¹ As part of this project, Comcast in May of 2003 brought 40 leaders into schools throughout the DC Metro area.¹² At the conclusion of the program, thirteen scholarships totaling \$25,000 were awarded to students who eloquently described how the events impacted their lives. The company intends to continue this deployment of high-speed Internet to every neighborhood in the District of Columbia, as well as to communities in all of its franchise areas, to ensure that all public schools and libraries have access to high-speed Internet.

Comcast shows its commitment to communities in myriad additional ways. For example, company employees organize an annual "Comcast Cares Day" in which Comcast employees work on local volunteer projects.¹³ Both Comcast and Time Warner have sponsored events such as town hall meetings on important issues including drug abuse and then aired them on their networks. Both companies have also entered into various partnerships with non-profit

¹¹ Based on the powerful impact of "Students & Leaders" as an educational tool, Comcast and C-SPAN were honored in March 2004 with a Golden Beacon Award for outstanding public affairs programming.

¹² Leaders participating in this program included Supreme Court Justices Clarence Thomas, Sandra Day O'Connor, and Stephen Breyer, Congressman John Lewis and other members of Congress, cabinet members, as well as journalists and representatives of the media.

¹³ In October 2005, 30,000 employee volunteers and their families participated in Comcast's company-wide day of community service, partnering with local organizations on projects to benefit neighborhoods from Manchester, NH to Los Angeles, CA. They contributed more than 180,000 volunteer hours, which is the equivalent of more than 20 years of service, in one day. Comcast volunteers worked on local projects – from painting schools and landscaping community parks to stocking food banks – with 284 community organizations in 32 states and the District of Columbia. The Comcast Foundation donated more than \$1 million in grants to the community partner organizations with which employee volunteers worked on company-wide day of service. This annual day of volunteer service dates to 1997, when Comcast employees and their families began participating in a Philadelphia-based community service effort; the success of that initial effort prompted Comcast to expand the initiative to a company-wide effort in all locations. In recognition of the company's commitment to volunteerism, Comcast Cares Day received CTPAA's Golden Beacon Award in 2001, the association's highest honor. In addition to Comcast Cares Day, employees volunteer year-round with a variety of projects and organizations through the company's Comcast Cares program.

organizations such as the United Way, City Year, and Partnership for a Drug-Free America. This local involvement demonstrates Comcast's and Time Warner's dedication to their communities and led to their recognition, by organizations such as the Urban League, as "shining examples of corporate responsibility."¹⁴

In sum, Comcast has demonstrated a clear commitment to improving all of its cable systems, regardless of the income levels of the franchise area, and to providing state-of-the-art services to *all* of its subscribers. Given this commitment, the Commission can be assured that the companies will ensure that all customers served by Adelphia's systems will receive high quality service.

¹⁴ Letter to Chairman Martin and Commissioners Abernathy, Copps, and Adelstein, from James E. Willingham, Sr., President & Chief Executive Officer, Urban League of Greater Hartford, Inc., MB Docket No. 05-192, 2, (filed July 15, 2005).

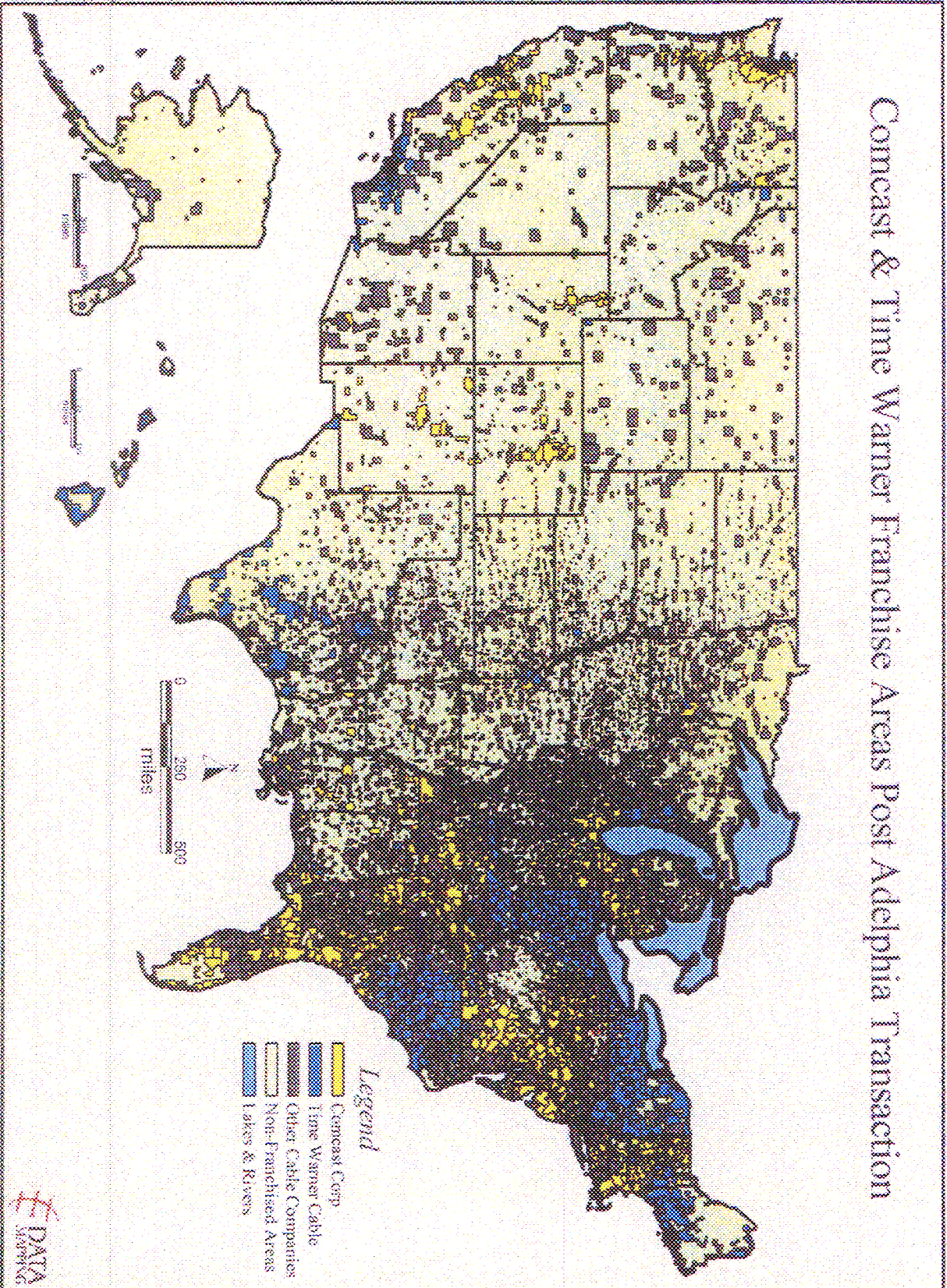


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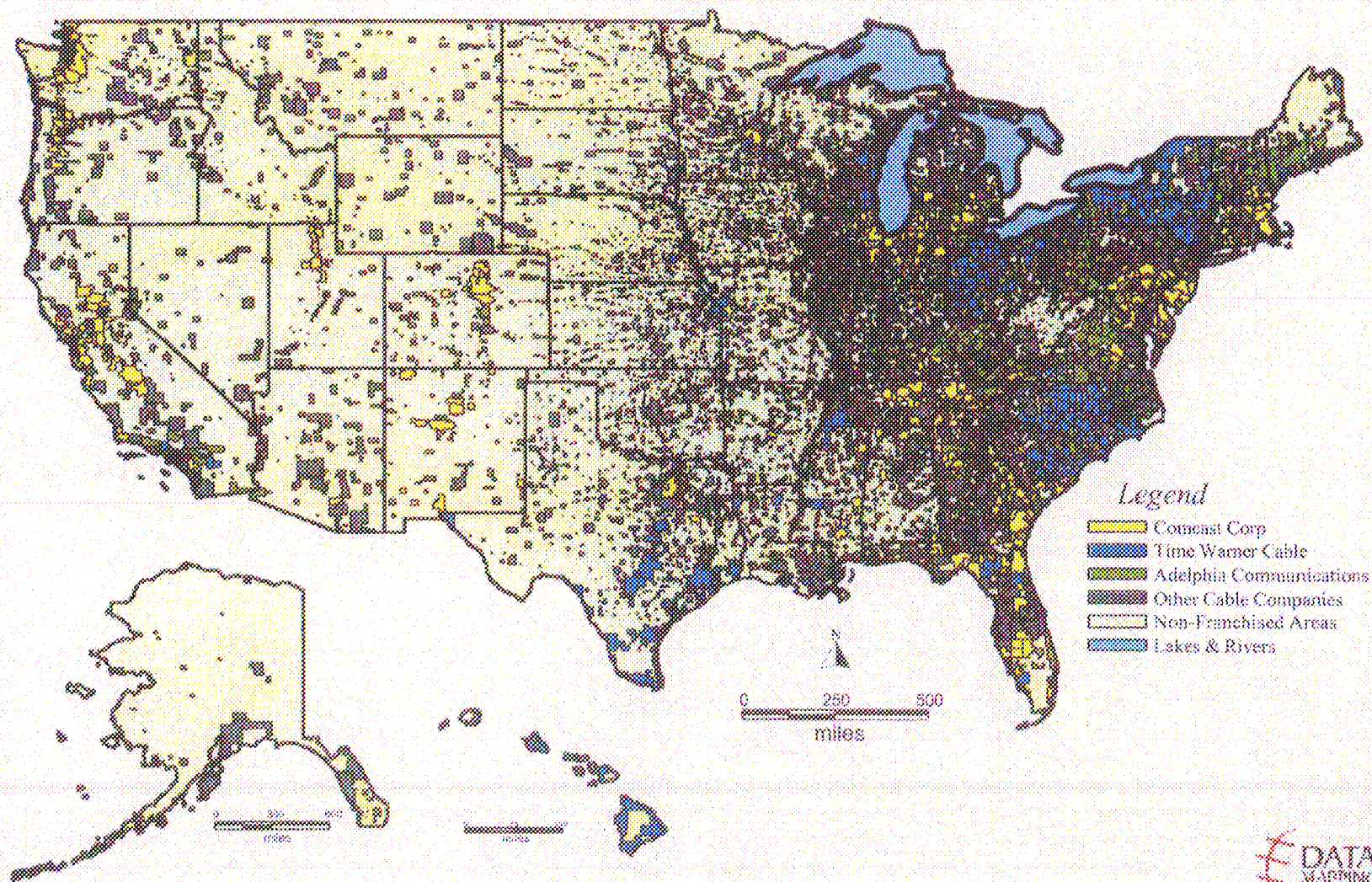
EXHIBIT C

Pre- and Post-Transactions
Applicant Service Areas

Comcast & Time Warner Franchise Areas Post Adelphia Transaction



Comcast, Time Warner, & Adelphia Franchise Areas Pre-Transaction





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